

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

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4 JAYSEN ALEXANDER PATTERSON,

Case No. 2:16-cv-01145-APG-CWH

5 Petitioner,

ORDER

6 v.

7 D.W. NEVEN, et al.,

8 Respondents.

9 Before the court is a *pro se* petition for writ of habeas corpus pursuant to 28
10 U.S.C. § 2254, submitted by Jaysen Alexander Patterson, a Nevada state prisoner
11 (ECF No. 1-1). His application to proceed *in forma pauperis* (ECF No. 1) shall be
12 granted. Patterson has moved for a stay of these federal proceedings until his state
13 habeas petition is resolved (ECF No. 3). He notes that the Nevada Supreme Court
14 affirmed his conviction on October 19, 2015, and that he filed a timely state
15 postconviction petition for a writ of habeas corpus on May 11, 2016, which is currently
16 pending in state district court (ECF No. 1-1).¹

17 The Antiterrorism and Effective Death Penalty Act (AEDPA) went into effect on April
18 24, 1996 and imposes a one-year statute of limitations on the filing of federal habeas
19 corpus petitions. 28 U.S.C. § 2244(d). The one-year time limitation can run from the
20 date on which a petitioner's judgment became final by conclusion of direct review, or the
21 expiration of the time for seeking direct review. 28 U.S.C. § 2244(d)(1)(A). A properly
22 filed petition for state postconviction relief can toll the period of limitations. 28 U.S.C. §
23 2244(d)(2).

24 In *Pace v. DiGuglielmo*, the United States Supreme Court indicated that a
25 petitioner facing the "predicament" that could occur if he is waiting for a final decision
26 from the state courts as to whether his petition was "properly filed" should file a
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28 ¹ As the court may take judicial notice of the state-court docket, see *also* Nevada Supreme Court Case No. 64855 and state district court case no. CR15-0274A.

1 “protective” federal petition and ask the federal court for a stay and abeyance. 544 U.S.
2 408, 416 (2005). *See also, Rudin v. Myles*, 766 F.3d 1161, 1174 (9th Cir. 2014).

3 Patterson asks this court to consider his federal petition as a protective petition
4 and grant a stay and abeyance until his state-court proceedings conclude (ECF no. 1-
5 1). He appears to misapprehend that the AEDPA statute of limitations may be tolled
6 pending the resolution of a timely state postconviction petition (see ECF No. 3, pp. 2-3).
7 Patterson does not argue that it is possible that his state petition could be deemed not
8 properly filed, and therefore, he presents no basis for a protective petition here.

9 Accordingly, this action shall be dismissed without prejudice to the filing of a new
10 habeas petition in a new action with a new case number at the conclusion of Patterson’s
11 state-court proceedings. As indicated, it does not appear from the papers presented
12 that a dismissal without prejudice will materially affect a later analysis of any timeliness
13 issue with regard to a new action filed in a timely manner after petitioner’s state-court
14 proceedings conclude. The court notes that petitioner at all times remains responsible
15 for properly exhausting his claims, for calculating the running of the federal limitation
16 period as applied to his case, and for properly commencing a timely-filed federal habeas
17 action.

18 **IT IS THEREFORE ORDERED** that petitioner’s application to proceed *in forma*
19 *pauperis* (ECF No. 1) is **GRANTED**.

20 **IT IS FURTHER ORDERED** that the Clerk **shall file and ELECTRONICALLY**
21 **SERVE** the petition (ECF No. 1-1) on the respondents. No response is required by
22 respondents.

23 **IT IS FURTHER ORDERED** that the Clerk shall add Adam Paul Laxalt, Nevada
24 Attorney General, as counsel for respondents.

25 **IT IS FURTHER ORDERED** that petitioner’s motion for stay (ECF No. 3) is
26 **DENIED**.

1 **IT IS FURTHER ORDERED** that the petition is **DISMISSED** without prejudice as
2 set forth in this order.

3 **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel
4 (ECF No. 2), motion to supplement petition (ECF No. 4), and motion re default judgment
5 (ECF No. 5) are all **DENIED** as moot.

6 **IT IS FURTHER ORDERED** that, as reasonable jurists would not find the
7 dismissal without prejudice of this petition to be debatable or wrong, a certificate of
8 appealability is **DENIED**.

9 **IT IS FURTHER ORDERED** that the Clerk shall enter judgment accordingly and
10 close this case.

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12 DATED: 13 October 2016.

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16 ANDREW P. GORDON
17 UNITED STATES DISTRICT JUDGE
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